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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,836	03/30/2005	Won Bae Lee	SHIN3,001APC	5849
29995 7590 11/28/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER DAMIRON, ANITA B				
ART UNIT		PAPER NUMBER		
1797				
NOTIFICATION DATE		DELIVERY MODE		
11/28/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/529,836

Applicant(s)

LEE, WON BAE

Examiner

ANITA B. DAMRON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 03/30/2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
4a) Of the above claim(s) 1-4 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 5-7 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 03/16/2006 and 11/06/08
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Summary

1. This is the initial Office Action based on the 10/529,836 application filed March 30, 2005.
2. Claims 1-4 have been withdrawn. Claims 5-7 are pending and have been fully considered.

Election/Restrictions

3. A telephone call was made to Mincheol Kim on 10/24/2008 to request an oral election to the above restriction requirement, but did not result in an election being made.
4. On a voicemail received from Mincheol Kim on 10/31/2008 a provisional election was made without traverse to prosecute the invention of II, claims 5-7.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-4 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Restriction is required under 35 U.S.C. 121 and 372.
6. This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1
7. In accordance with 37 CFR 1.499, applicant is required, in reply to this action to elect a single invention to which the claims must be restricted.
8. Group I, claims 1-4 are drawn to a means for analysis of a breath sample to be examined in class 422 subclass 084.
9. Group II, claims 5-7 are drawn to calibration of a gas analyzer, to be examined in class 73 subclass 1.02.

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10. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

11. The special technical feature of Group I is a portable gas sensor comprising a calibration unit. The use of the combination cannot be a special technical feature under PCT Rule 13.2 because the combination is known in a prior art. Invention. SUNSHINE et al. (US 6,418,783 B2) is a handheld sensing apparatus with (on-chip calibration) as described in column 13 line 29 and (a Target mode, in which the device is calibrated by exposing it to samples of known identity) column 15 lines 41-43.

Priority

12. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Korea on 07/29/2002. It is noted, however, that applicant has not filed a certified copy of the instant application as required by 35 U.S.C. 119(b).

Information Disclosure Statement

13. The information disclosure statement filed 11/06/08 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because references cited were not attached. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claim 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by VOIGT et al. (US 4,278,636).

16. Regarding Claims 5 and 6, VOIGHT et al. teaches a method for calibrating a portable gas sensor having a sensing material reacting to a target gas, comprising the steps of: storing a reference voltage value corresponding to a resistance value of the sensing material with respect to a reference gas in a memory; inputting a calibration operation mode by maneuvering a key operation; measuring a first voltage corresponding to a resistance value of the sensing material with respect to a substitutionary reference gas; and storing the first voltage value in the memory by replacing the stored reference voltage value, wherein the substitutionary reference gas is a human breath or air/atmosphere in the specification column 4 lines 5 and 24-68 and column 5 lines 1-3. Testing of a person for is taught in column 5 lines 4-26.

17. Claim 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by HOPPESCH et al. (US 3,877,297).17. Regarding Claims 5 and 6, HOPPESCH et al. teaches A method for calibrating a portable gas sensor having a sensing material reacting to a target gas, comprising the steps of: storing a reference voltage value corresponding to a resistance value of the sensing material with respect to a reference gas in a memory; inputting a calibration operation mode by maneuvering a key operation;

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measuring a first voltage corresponding to a resistance value of the sensing material with respect to a substitutionary reference gas; and storing the first voltage value in the memory by replacing the stored reference voltage value, wherein the substitutionary reference gas is a human breath or air/atmosphere. In the specification column 5 lines 28-48. The calibration device is plugged in.18. Claim 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by CHANG et al. (US 3,966,579).

18. Regarding Claims 5 and 6, CHANG et al. teaches a method for calibrating a portable gas sensor having a sensing material reacting to a target gas, comprising the steps of: storing a reference voltage value corresponding to a resistance value of the sensing material with respect to a reference gas in a memory; inputting a calibration operation mode by maneuvering a key operation; measuring a first voltage corresponding to a resistance value of the sensing material with respect to a substitutionary reference gas; and storing the first voltage value in the memory by replacing the stored reference voltage value, wherein the substitutionary reference gas is a human breath or air/atmosphere. In the specification column 8 lines 45-62.

19. Claims 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by KRAJCI (US 6,182,497).

20. Regarding Claim 5, KRAJCI teaches a method for calibrating a portable gas sensor having a sensing material reacting to a target gas, comprising the steps of: storing a reference voltage value corresponding to a resistance value of the sensing material with respect to a reference gas in a memory; inputting a calibration operation mode by maneuvering a key operation; measuring a first voltage corresponding to a resistance value of the sensing material with respect to a substitutionary reference gas; and storing

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the first voltage value in the memory by replacing the stored reference voltage value. In the specification column 7 lines 10, 11 and 66 through column 8 line 20.

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21. Regarding Claim 7, KRAJCI teaches a computer readable recording medium storing instructions for implementing the method for calibrating the portable gas sensor having the sensing material reacting to the target gas, the computer readable recording medium comprising the instructions of: storing a reference voltage value corresponding to a resistance value of the sensing material with respect to a reference gas; inputting a calibration operation mode by maneuvering a key operation; measuring a first voltage corresponding to a resistance value of the sensing material with respect to a substitutionary reference gas; and storing the first voltage value in the memory by replacing the stored reference voltage value. In the specification column 6 lines 20-31.

22. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by LOPEZ et al. (US 4,749,553)24.

23. Regarding Claim 5, LOPEZ teaches a method for calibrating a portable gas sensor having a sensing material reacting to a target gas, comprising the steps of: storing a reference voltage value corresponding to a resistance value of the sensing material with respect to a reference gas in a memory; inputting a calibration operation mode by maneuvering a key operation; measuring a first voltage corresponding to a resistance value of the sensing material with respect to a substitutionary reference gas; and storing the first voltage value in the memory by replacing the stored reference voltage value. In the specification column 2 line 16, column 10 lines 25 and 26, and column 12 lines 4-6425.

24. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by BROWN et al. (5,303,575).26.

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25. Regarding Claim 7, BROWN et al. teaches a computer readable recording medium storing instructions for implementing the method for calibrating the portable gas sensor having the sensing material reacting to the target gas, the computer readable recording medium comprising the instructions of: storing a reference voltage value corresponding to a resistance value of the sensing material with respect to a reference gas; inputting a calibration operation mode by maneuvering a key operation; measuring a first voltage corresponding to a resistance value of the sensing material with respect to a substitutionary reference gas; and storing the first voltage value in the memory by replacing the stored reference voltage value. In the specification column 19 line 32 through column 20 line 33.

Claim Rejections - 35 USC § 103

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

27. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

28. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over DER GHAZARIAN et al. (US 2002/0084130 A1) in view of LOPEZ et al. (4,749,553) in further view of SUNSHINE et al. (US 6,418,783 B2).

29. Regarding Claims 5-7, DER GHAZARIAN et al. teaches a voice recognition breathalyzer with memory storage and a processor, with audio visual functionality, and other features including remote control in the abstract and the specification paragraphs 0019 and 0020.

DER GHAZARIAN however does not teach an on device calibration unit.

LOPEZ et al. teaches a hand held breath alcohol detector with a self-calibration feature in the specification column 2 line 16, column 10 lines 25 and 26, and column 12 lines 4-64.

SUNSHINE et al. teaches a handheld gas sensing apparatus with (on-chip calibration) as described in column 13 line 29 and (a Target mode, in which the device is calibrated by exposing it to samples of known identity) column 15 lines 41-43.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the portable breathalyzer device of DER GHAZARIAN et al. with the self-calibration feature of LOPEZ et al. and the calibration feature of SUNSHINE et al. to allow the user to calibrate the unit before testing to compare the current breath sample with past breath samples and ambient air samples to provide more accurate information and a more complete file for possible use in court on repeat offenders to the remote police station.

Conclusion

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30. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure is related to the main reference cited in this action. LACONTI (US 4,025,412) teaches a calibrating device for a breath-alcohol measuring instrument, SUNSHINE et al. (UA 6,085,576) teaches a portable vapor sensing device storing several reference sample signatures, SUNSHINE et al. (US 6,234,006 B1) teaches a hand held vapor sensing device, and SUNSHINE et al. (US 6,422,061 B1) teaches a hand held vapor sensing device with a wireless communication interface.

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANITA BUCSAY DAMRON whose telephone number is (571)270-5549. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 4:30 a.m. EST.

32. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A Warden can be reached on 571-272-1297. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

33. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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